In the High Court of Judicature at Madras

Dated: 12/03/2003

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The Honourable Mr. Justice R.Jayasimha Babu
and
The Honourable Mr. Justice N.V.Balasubramanian

Letters Patent Appeal No.80 of 2000
and
C.M.P.No.6111 of 2000

K. Venkatesan ..... Appellant

-VS-

1. M/s. Pandian Roadways
Corporation Limited, a Tamil
Nadu Government Transport
undertaking rep.by its Managing Director
having its Office at Bye-pas Road,
Madurai -16

2. L. Ramanathan ..... Respondents

Letters Patent Appeal filed against the judgment and decree dated 2.12.1999 made in A.S.No.491 of 1986 on the file of this Court reversing the judgment and decree made in O.S.No.884 of 1980 on the file of the III Additional Sub Judge, Madurai.

!For appellants : Mr. G. Sukumaran

^For 1st respondent : Mr. P. Pandi

:JUDGMENT

(Judgment of the Court was delivered by
R.Jayasimha Babu,J)

The appellant was accused of having embezzled the funds belonging to the Transport Corporation by drawing money from the Treasury, but failing to remit the same to the Corporation and to bring it into the books of the Corporation. Such embezzlement occurred between March and September, 1976 when the appellant was in the employment of the respondent Corporation handling the bus warrants and collecting the amounts from the Treasury in respect of those warrants, the warrants being the documents issued by the police officials who had travelled on the respondent's buses without paying cash. The warrants, in effect, were credit vouchers which were required to be

subsequently paid by the police authorities who had in this case been doing so by authorising the drawal of the amounts being the fare payable by the policemen who travelled in the buses by using those warrants, from the Treasury.

2. The suit was filed on 29.4.1980 within three years from 7.5.1977 , the date on which the misappropriation committed by the appellant was detected by the respondent - Transport Corporation.
3. In the plaint, it was alleged that the appellant had been employed as a Senior Clerk in the Bus Warrant Section of the Corporation which was the plaintiff, he having joined the Southern Roadways in the year 1957, and after 1972, having continued in service of the Corporation which had taken over the business of Southern Roadways Private Limited with regard to the running of passenger services. He remained in employment till 1.8.1976 when he retired, but was immediately re-employed on a daily wage basis till 2.5.1977. In the plaint, it was further averred that in or about the first week of May, 1977 i.e., on 2.5.1977, on surprise scrutiny, it was found that the appellant had not remitted various amounts collected by him from the Treasury Office on the basis of a number of bus warrant bills and had not accounted for the same. The total amount which he had so collected, but had not remitted was stated to be Rs.1,40,016.85. It was also alleged in the plaint that shortly after detection, the appellant was questioned when he admitted his guilt and made the confession statement to the Management on 7.5.1977.
4. In paragraph 14 of the plaint, it was categorically stated that the appellant after encashing the amounts of the bills had not brought the same to account and had not remitted the monies to the plaintiff - Pandian Roadways Corporation. In paragraph 18, it was stated that the monies had been embezzled and in paragraph 20, the cause of action for the suit was said to have arisen on 2nd May,1977 "when the criminal misappropriation was detected" and on 7.5.1977 when the first defendant pleaded guilty to his act of embezzlement.

5. In the written statement filed, the appellant who was the defendant did not plead that the suit was barred by limitation. He admitted the fact that he was in charge of the encashment of the Bus Warrants, that he had encashed the same, but had claimed that he had remitted the monies to the Corporation and that he had not given a confession voluntarily.

6. Though the trial Court dismissed the suit, the appeal preferred against that judgment was successful. The learned single Judge has recorded the categorical finding that there was, in fact, misappropriation and the defendant was liable to make good the amounts so misappropriated, to the employer.

7. The question of limitation was raised for the first time in appeal. The learned single Judge considered that plea and negatived the defendant's submission that the suit claim was barred by limitation. While doing so, the learned single Judge has observed that the suit was barred under Article 24 of the Limitation Act which deals with the period within which the suits for recovery of money is to be brought, the point of time from which the limitation runs under that Article being the time at which the monies were

received, the period within which the suit to be brought being three years. The learned single Judge thereafter referred to Section 17 of the Act and held that as the defendant had embezzled the money, it was clearly a case of fraud and, therefore, the limitation would begin to run only when the fraud came to be detected.

8. Learned counsel for the appellant submitted before us that the finding so recorded by the learned single Judge on the question of limitation is erroneous, as according to him, the requirements of Order 7 Rule 6 of the Code of Civil Procedure had not been complied with by the plaintiff. That Rule provides that where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed. The proviso to the Rule states that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

9. It is clear that this Rule will be attracted only in cases where a suit is instituted "after the expiration of the period prescribed by the law of limitation". When a plaintiff pleads fraud, the period of limitation, when the commission of such fraud is proved, will not begin as provided in Section 17 "until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, ...:.". Thus, the period of limitation in this case did not begin to run, until the time of discovery of the fraud that had been committed by the appellant. When the period of limitation itself had not begin, no question of claiming exemption from the law of limitation would arise for consideration.

10. In cases of fraud where the relief claimed is one of recovery of money, Article 24 of the Limitation Act must necessarily be read with Section 17 of the Act. So read, the period of limitation would not begin to run until the time of discovery of the fraud or the time at which it could have been discovered.

11. In the plaint, it has been clearly averred that there was embezzlement and that such embezzlement came to be detected on 2.5.1977 which was within few months from September, 1976, in which month, the last of the bills, for which money was drawn but not remitted to the Corporation, was presented to the Treasury by the defendant in the suit. The learned single Judge has rightly held that this was not a case of any lack of diligence on the part of the respondent. Embezzlement clearly having been established and Section 17 of the Limitation Act having been attracted, the limitation would begin to run only from the date of detection, and not from any point of time prior thereto.

12. Fraud has always been treated in law as vitiating any transaction and the person who has been the victim of the fraud is given extended protection in law so that he may recoup the rightful position in which he

should have been placed, but for the fraudulent act committed in relation to him. The law does not require the victim of the fraud to lose the remedy in law to recover the monies from the employee who had committed the fraudulent act, even when he could not have taken recourse to that remedy by reason of being unaware of the fraud that had been committed, despite reasonable diligence.

13. Learned counsel for the appellant then contended that the question of limitation should not have been considered for the first time by the appellate Court. That question was raised not by the plaintiff, but by the defendant, and it does not lie in the mouth of the defendant now to claim in the further appeal that a point that he had raised in the appellate Court should not have been considered after it had received due consideration and had been rejected. The question of limitation was not raised in the trial Court, and was not a point which required consideration at all by the appellate Court and would not have been considered but for the submission that had been made for the defendant before the appellate Court. The fact that that plea failed does not entitle the defendant now to claim that the appellate judgment is vitiated by the reason of such consideration.

14. We do not find any merit in the appeal and the same is dismissed.

Index: Yes
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To
The III Additional Sub Judge,
Madurai.